

THE HABIT OF CRIME IN THE UNITED STATES¹

THE President of the United States said recently in New York that the prevalence of crime in the United States had become the most alarming of all the evils of the time. He pointed out that in the cities of this country there are twenty times as many violent deaths per year and per unit of population as in the cities of the other great modern nations. And in consequence of the undisputed facts the President has appointed a commission of the very best men in the country to assess the causes and propose a remedy. This is a bold and courageous thing to do. But the commission in accepting the undertaking take upon themselves one of the most difficult and thankless tasks that has ever been accepted by any body of men since the Commission to Negotiate Peace in Paris sailed hopefully from New York in 1918. Let us review the great items and the growth of the crime situation in the country.

When the first of the makers of this country made settlement on North American shores, there were some five hundred thousand natives on the soil. There was imminent danger of war and extinction of the settlers. The British government with the hearty approval of the pioneers entered into solemn agreements with the Indians to take certain areas of land and never thereafter so long as water ran down hill to allow any pioneer to buy or take lands not ceded. For

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two hundred years these treaties were solemnly made and for two hundred years the pioneers ignored the law, broke the treaties, killed Indians who resisted and took lands not ceded. It meant a state of warfare on the frontier from 1609 till 1893; a warfare which originated in sheer lawlessness. There was hardly any land law of any character which our ancestors did not violate with impunity from decade to decade. I am not undertaking to fix the grades of responsibility for this early and fatal practice of treaty breaking; I am merely stating the fact and adding that it was not necessary, and that a dangerous habit was entering into the life of the rising nation.

Similarly there was a solemn law enacted in 1807 under the benevolent and wise leadership of Thomas Jefferson. The statute decreed that slaves purchased for a song by Rhode Island and New York ship captains on the coast of Africa should not be landed in any port of the United States, and that any ship captain who violated the law should lose his ship and himself suffer heavy penalties. In 1818 and 1820 this policy was sharpened to the point that the offender should lose his ship, his slaves, and his life. And this law was made an international treaty by the assent of Great Britain and the assistance of that country in its enforcement. The law was violated every year in most flagrant fashion, as many as eighty ships engaged in the trade in some years; and it was commonly said in 1860 that fifteen thousand slaves were imported that way into the United States: northern ships and southern markets. Few if any ships were ever confiscated; and only one man was ever hanged under the law, a poor devil caught and hanged in 1862, when it was too late to expect any good effect.

There are men who say laws should not be passed if public sentiment is not wholly crystallized in favor of their

enforcement. Here is a case for the study of public sentiment and the reasons for the enactment of law. I shall merely say the violation of this law was one of the primary causes of the civil war in this country and add that our grandfathers paid dearly for their lawlessness.

One of the most fruitful of all the acts of Congress in the making of men lawless was the Fugitive Slave law of 1850—an act of Congress solemnly urged by no less personages than Daniel Webster, Henry Clay, Rufus Choate, and the most eminent of southerners everywhere. From 1851 to 1861 men and bodies of men violated the law and boasted of the violation. Their grandsons boast today from many platforms that their grandfathers were lawless, underground railroads being the principal means. It may be said this law was wrong. It probably was. But who decides what is socially wrong? An overwhelming majority of the representatives of the people enacted the law; and these representatives were clearly supported by an overwhelming majority of the voters. Yet majorities of certain states took it upon themselves to say that their law officers should not enforce it, all agreeing that the law was constitutional. It was clear, open, and public violation of law, and law was and is the acknowledged cement of every social order. The reason is to be sought in the long-cultivated habit in Americans of flouting the law they made, the outcome to be sought in the horrors of the war which followed. A quiet observance of the Fugitive Slave law, after the manner in which other peoples observe distasteful laws, and a steady pressure of its opponents for its repeal might easily have prevented the great war which changed forever the character of the country. I have cited three great instances in the history of the country, instances which carry with crushing weight the warning that lawlessness is both dangerous and terrible

in its consequences. There are a few cases nearer our own time which tell the same story.

Out of the long controversy between the railroad companies and the farmers of the west and northwest which lasted from 1868 to 1914, there was one notable law enacted by Congress in 1886, the Interstate Commerce act, which specifically claimed for the people the right to control the railroads. A commission was appointed to sit in Washington, hear complaints of lawlessness against the roads and take steps to remedy the ills acknowledged by all. The commissioners in the effort to do their duty called witnesses and summoned railroad officials. The railroad officials refused to obey, claiming the law unconstitutional. The Federal Supreme Court sustained the railroads and twenty years later under the leadership of Theodore Roosevelt the Interstate Commerce act was amended and full powers claimed and guaranteed in the amended law. The railroads again urged that the people could not, under the constitution, control interstate transportation; and the Federal courts again sustained the officials of the roads, guilty as all agree, all the while in the most unsocial of practices. In 1914 the Interstate Commerce act was again amended; the railroads were again warned to submit; and the Commission authorized to act. The roads again resisted, but the courts failed this time to support them and today all the railroads in the United States recognize the right of the people to control and regulate their vast business.

It required thirty years of persistent agitation on the part of vast numbers of people to accomplish the result. It was a great and a necessary reform, long delayed on account of the socially expensive power of judicial review. In the long struggle when the courts were plainly against the people who gave them their power, a great deal of what they

sought was lost forever and hundreds of thousands of privileged individuals had reaped the rich fruits of wrongdoing and oppression. But was it not better to work and fight in patience so long as the organic law of the land was in question? A violent course on the part of the reformers would surely have lost them everything they sought. It was an expensive way; but it was the way of law-abiding people.

Another and a somewhat different case came in 1890. The managers of great business corporations, like railroad managers, in the preceding decades drove their affairs through states and ran riot in lawlessness and bribery in the decade before 1890. The country, suffering under a drastic and long-continued deflation, was at the point of revolution. Both parties in Congress, supported by overwhelming majorities of the voters, enacted the famous Sherman anti-trust law and attached severe penalties. It was a case like that of 1807, hardly a doubt as to the need of drastic national action. The ablest lawyers of the time drew the law in the hope that the courts could not claim that the constitution was violated; no American law was ever more carefully drawn. Here as in the railroad regulation measure, there was long drawn-out controversy, business men violating the law every day of their lives because it was profitable to do so. But here as in the former case, the people pressed their case, the courts which might have been supposed to be for them, delayed and split hairs from 1890 to 1914 when another national commission was created to regulate and control the great businesses of the country: a control as necessary as democratic. The era of Reconstruction lawlessness is omitted here because it was a part of the civil war.

The long struggle between the democratic and the oligarchic forces of the nation matched that of the struggle

between similar forces between 1801 and 1861. The people in the former case became involved in lawlessness along with their opponents. In the latter case the masses, save in workmen's strikes which involved much else, remained law-abiding and fought on under the most difficult of constitutions to their end, not yet wholly won, though wholly recognized as wise and proper. On the side of business leaders there was constant lawlessness which made a joke of constitutions, state and national. In Pennsylvania, in the great iron regions of Minnesota, in West Virginia, in Iowa, and the distant California, courts were debauched or legislatures corrupted, the powers of state officials prostituted and city councils utterly depraved—the prizes being charters, rebates, public utilities. It was the era of Tammany bosses like Murphy, of national bosses like Hanna. Men became accustomed to see law violated; to witness year after year interminable court delays and absolute flaunting of both Federal and State statutes. It was the greatest of all epochs of lawlessness of which the poet wrote:

That bids him flout the law he makes,
That bids him make the law he flouts.¹

In 1918 to 1920 another and a far-reaching reform movement concluded in a law and a constitutional amendment. I do not here discuss or assess the wisdom of the law or the amendment. It is enough to say that a clear majority of the people and three-fourths of the states, not true of any of the other great laws discussed, favored and urged the law, and passed it against the veto of one of the great presidents. From 1920 to the present day great numbers of men and women, people low in the economic order and other people who set the *mores* of the country, violated the law and the constitution. Smuggling the forbidden liquor into the coun-

¹ Kipling, *The Seven Seas*, 161.

try, into men's cellars, became a fashion and a fad. Thousands of well-to-do people make a point of serving wines and stronger drinks on their tables and of half-compelling their guests to join in their violation of law. The consequence is that clever men have organized gangs to smuggle liquors to their consumers, that courts are again winking at violation of law, that the enforcement of the law has become well-nigh impossible, that thousands of people are arrested, injured or killed each year. And once more a people whose very existence depends on the observance of law is demoralized. The ancient habit of lawlessness reasserts itself and the juggernaut of crime threatens to run them down. More deaths per year from violence in one of our great cities than in all Great Britain or France!

The poor emigrants from England of the early seventeenth century, expelled from their country by the impossible conditions which there prevailed, had founded a great country. In the process they and their successors struggled against odds, their own cupidity and the lure of vast social power, and they forgot at times the dangers of the very lawlessness against which they warned Europe. From one economic victory to another, from one scientific discovery to another, from riches that simply astonished to riches that surpassed all imagination, and the end is not yet! But in the midst of and alongside these marvellous successes, there has grown up and persisted the habit of lawlessness, there has appeared a monster of evil till there is now, as the President says, no people in the world that begins to equal in crime the descendants of the Virginia gentry and the stern Puritans of Massachusetts; and the danger is imminent and ominous. Chicago, New York, and all the lesser cities present one vast complex of lawlessness: political bosses who thrive upon crime; poor women who are the victims and

the accomplices of crime; gangs and feudists who infest the streets of all great cities with more of menace than ever the blacks and whites of Italian cities menaced the peace of their time. Great ships scour the coasts to violate law; they are as familiar on the Chesapeake Bay as ever were the pirates of Blackbeard's time; they do more violence in a year on the borders of Canada than was done there in the long Indian wars which gave that border a bloody fame. It is a black picture which presents itself and the President does not underestimate its danger. But is there a remedy which may save the great cities from the chaos which is threatened?

The distinguished commissioners will find many remedies. I will hesitate to name the most promising: our ancestors of 1776-1787 in the hope of escaping the dangers and the losses of popular uprisings, like the Shays rebellion, set up in every state and in the nation constitutional barriers against the effects of popular agitation: legislatures were divided into two houses, the one to check the other; governors were checked by both houses of legislature; and then the courts claimed for themselves the then unprecedented prerogative of vetoing measures which passed checked legislatures and limited governors duly balanced. This in every state as in Congress and the national courts. And when in the Jackson era the peoples of all regions of the country sought to escape these limitations through manhood suffrage and the filling of offices through elections, there appeared in the South clever political groups and in the North cleverer political bosses who so managed that manhood suffrage and popular election to office were without effect. The bosses soon had unchecked control in the cities; they controlled the states almost as effectively. How could the nation escape?

And to make this chaos of balanced powers, the courts more and more recognized and practised appeals, delays,

technicalities, and, where needed, judicial review (both for good and bad purposes). It was the heyday of the cheap lawyer, the shyster, and the bribe-giver. Much as one may regret to say so, the courts became and remained the arena and the opportunity of him who violated law and made justice a byword and a jeer. None but the legal expert or the most obvious victims of the most obvious crimes may now enter courts with assurance. Thus the fears of the fathers and the delays of the courts have been fruitful sources of the ills which now bear us down.

A more direct and a more simple political and judicial system is, I think, the first way of reform. But a more direct and a more simple system would, if proposed by the commission, be decried from one end of the land to the other: decried as revolutionary, an affront to the fathers, a bid to bolshevism. Members of recent constitutional conventions have seen the difficulty. They have said that no simplifying of our system can ever pass the silent watches of the bosses and the precinct captains. Thus the greatest of all remedies is beyond the greatest of our powers; the less promising devices may not be. And the Commission may be tempted to emphasize these. Has not the President pressed upon his Commission a dilemma which if they meet in one way they will be damned, or which, if they meet it in another, they will be laughed at? Is the habit of lawlessness beyond remedy in the greatest of republics?

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